IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6998 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITKUMAR AMRITLAL MAUN (MEHTA) - Petitioner(s)

Versus

CHAIRMAN, ANJAR AREA DEVELOP- MENT AUTHORITY & 2 - Respondent(s)

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Appearance :

MR NALIN K THAKKER for Petitioner(s) : 1,
MR NIKHILESH J SHAH for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
Mr. M.R. Mengdey, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/09/2005

ORAL JUDGMENT

Rule. Shri Nikhilesh J. Shah, learned advocate waives service of Rule on behalf of respondents No. 1 and 2 and Shri MR Mengdey, learned AGP waives service of Rule on behalf of respondent No.3. With the consent of the learned advocates

appearing for the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Chief Executive Officer, Anjar Area Development Authority, Anjar, dated 29.12.2004 in cancelling the allotment which was made in favour of the petitioner.

3. Shri Nalin K. Thakkar, learned advocate for the petitioner has made number of submissions on merits. One of the grievances which is made in the present Special Civil Application is that before passing the impugned order dated 29.12.2004 neither the petitioner is served with any notice nor given any opportunity of hearing to the petitioner. Therefore it is submitted that the impugned order/decision dated 29.12.2004 which is passed in breach of principles of natural justice should be quashed and set aside.

4. Shri Nikhilesh J. Shah, learned advocate appearing for respondents No. 1 and 2 is not in position to satisfy this Court as to whether before passing the impugned order any show cause notice was issued or any opportunity of hearing was given to the petitioner.

5. On perusal of the impugned order dated 29th

December 1994, it appears, prima facie, that the same is passed in breach of principles of natural justice. Under the circumstances, only on this ground alone, the order impugned is required to be quashed and set aside and the matter requires to be remanded to the appropriate authority for passing appropriate order in accordance with law and on merits after giving opportunity of hearing to the petitioner.

6. In view of the reasons hereinabove stated, the petition succeeds. The order passed by the Chief Executive Officer, Anjar Area Development Authority, Anjar, dated 29th December 1994 is hereby quashed and set aside reserving liberty to the said authority to pass an appropriate order within two months from the date of receipt of this order after giving opportunity of hearing to the petitioner. It is, however, made clear that this Court has not expressed anything on the merits of the case and the order impugned is set aside only on the ground that the same is passed in breach of principles of natural justice. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.